

Table of Contents

<u>Section</u>	<u>Page</u>
I. Purpose	2
II. Overview.....	2
III. Credits Available.....	2
IV. Substantiation.....	3
V. General Eligibility Requirements.....	3
VI. Eligible Business Type	3
VII. Wage Standard Test	5
VIII. Health Insurance	5
IX. Environmental Impact	6
X. Occupational Safety and Health Programs	6
XI. Overdue Tax Debts	6
XII. General Administration	7
XIII. Credit for Creating Jobs	10
XIV. Credit for Investing in Business Property	13
XV. Credit for Investment in Real Property	16

I. Purpose

This document sets out guidelines for the tax credits in Article 3J of Chapter 105 of the General Statutes. The document applies to tax years beginning on or after January 1, 2007.

II. Overview

Effective for taxable years beginning on or after January 1, 2007, the General Assembly created the Article 3J credits by enacting House Bill 2170. These credits are designed to replace the Article 3A credits, also known as the William Lee Act. The William Lee Act is set to expire for taxable years beginning on or after January 1, 2007, with some exceptions. A taxpayer cannot take Article 3J credits and Article 3A credits with respect to the same establishment.

The Article 3J tax credits are designed to attract certain types of new businesses to North Carolina and to foster expansions of certain types of businesses in North Carolina. The credits are based on a system that divides the State into three development tiers, with tier one being the most economically distressed and tier three being the least economically distressed. Each county is assigned a tier designation by the Secretary of Commerce on or before November 30th of each year. Generally, a designation applies only to the calendar year following the designation. A tier one area, however, may not be redesignated as a higher-numbered development tier area until it has been in its designated development tier area for at least two consecutive years. The Department of Commerce publishes a list of the counties and their respective tier designations.

Within each tier, there may be urban progress zones or agrarian growth zones. Municipalities with a population of at least 10,000 may apply for qualifying areas of poverty to be designated as urban progress zones. Counties that do not have a municipality with a population of at least 10,000 may apply for qualifying areas of poverty to be designated as agrarian growth zones. Upon application from a local government, the Department of Commerce determines whether an area is an urban progress zone or an agrarian growth zone. Projects within these zones receive enhanced credits. A zone designation is effective until December 31st of the year following the year in which the determination was made. The Department of Commerce publishes annually a list of urban progress zones and agrarian growth zones with a description of their boundaries.

III. Credits Available

For tax years beginning on or after January 1, 2007, credits are available for:

1. Creating jobs
2. Investing in business property

3. Investment in real property (available in development tier one only)

IV. Substantiation (G.S. 105-12.86(a))

To claim a credit, the taxpayer must provide any information considered necessary by the Secretary of Revenue to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer. The taxpayer must submit a portion of the qualifying information with the tax return. The taxpayer must maintain additional documentation needed to substantiate the credit and make it available for inspection by the Secretary of Revenue.

V. General Eligibility Requirements (G.S. 105-129.83)

The taxpayer must satisfy general eligibility requirements to qualify for any of the credits listed in Section III. These requirements are listed below, followed by a description of each specific requirement. The first five requirements pertain only to the establishment for which a credit is claimed.

1. Be an eligible business type
2. Meet the wage standard
3. Provide health insurance for employees
4. Have a good environmental record
5. Have a good Occupational Safety and Health Act (OSHA) record
6. Have no overdue tax debts with the State

VI. Eligible Business Types (G.S. 105-129.83(a))

Types

Article 3J allows tax credits only to certain types of businesses. A taxpayer is eligible for a credit only with respect to activities occurring at an establishment whose primary activity is listed below. The primary activity of an establishment is determined based on the establishment's principal product or group of products produced or distributed, or services rendered. For definitions of the business types described below, see G.S. 105-129.81.

1. Aircraft maintenance and repair
2. Air courier services hub
3. Company headquarters*
4. Customer service call centers
5. Electronic shopping and mail order houses
6. Information technology and services
7. Manufacturing

8. Motorsports facility
9. Motorsports racing team
10. Research and development
11. Warehousing
12. Wholesale Trade

** Additional Requirements for Company Headquarters* (G.S. 105-129.83(b))*

*A taxpayer is eligible for a credit with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A company headquarters job is primarily responsible for administering, overseeing, and managing other establishments of the company. A taxpayer that meets this job creation requirement is eligible for credits with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied. A taxpayer that engages in an activity that is not eligible for tax credits cannot become eligible for credits with respect to the ineligible activity by performing it at the same site as where the company headquarters is. For example, a company headquarters and a retail operation that are located at the same site are considered to be two establishments: a company headquarters and a retail establishment. The company headquarters that creates 75 jobs as described above is an eligible business activity for credits. The retail establishment is not.

The following additional examples illustrate when a taxpayer is eligible or ineligible for credits:

1. ABC Manufacturing Company

ABC's primary business is manufacturing. In the 2007 tax year, ABC constructs and begins operating a North Carolina manufacturing facility. The new jobs and investment at the North Carolina manufacturing facility are eligible for credits, subject to the other requirements of Article 3J. This is because ABC's primary business activity at the establishment is manufacturing.

2. EFG Manufacturing Company

EFG's primary business is manufacturing. All of EFG's manufacturing plants are located outside North Carolina. In the 2007 tax year, EFG constructs and begins operating a North Carolina warehouse facility. The new jobs and investment at the North Carolina warehouse facility are eligible for credits, subject to the other requirements of the Article 3J. This is because EFG's primary business activity at the establishment is warehousing.

3. *XYZ Manufacturing Company*

XYZ's primary business is manufacturing. In the 2007 tax year, EFG constructs and begins operating a North Carolina retail facility. The new jobs and investment at the North Carolina retail facility are not eligible for credits. This is because EFG's primary business activity at the establishment is not an eligible business type.

VII. Wage Standard Test (G.S. 105-129.83(c))

A taxpayer is not subject to a wage test to qualify for a credit with respect to an establishment located in a tier one area. Jobs that are located within an urban progress zone or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to 90% of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of 110% of the average wage for all insured private employers in the State and 90% of the average wage for all insured private employers in the county. The Department of Commerce annually publishes the wage standard for each county.

For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation. The wage standard calculation is described below.

1. For each month in the tax year, identify the number of full-time employees for the establishment who were included on line 1 of the Employer's Quarterly Tax and Wage Reports (NCUI 101s) as filed with the Employment Security Commission.
2. Add the number of full-time employees identified in Step 1 for each month and divide that amount by 12.
3. Divide the total wages included on line 2 for full-time employees of the NCUI 101s for this establishment by the number calculated in Step 2.
4. Divide the amount calculated in Step 3 by 52.
5. Compare the amount calculated in Step 4 to the applicable wage standard for the county where the jobs are located.

VIII. Health Insurance (G.S. 105-129.83(d))

A taxpayer is eligible for a credit only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. A taxpayer provides health insurance if it pays at least 50% of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to

provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires, and the taxpayer may not take any remaining installment or carryforward of the credit.

IX. Environmental Impact (G.S. 105-129.83(e))

Article 3J requires recipients of credits to have good environmental records. A taxpayer is eligible for a credit only if the taxpayer certifies that, at the time the taxpayer claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or an alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d).

The Department of Revenue receives notification from the Department of Environment and Natural Resources annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years. The Department of Revenue uses this information when auditing eligibility for the credits.

X. Occupational Safety and Health Programs (OSHA)
(G.S. 105-129.83(f))

Article 3J requires recipients of credits to have good occupational safety and health (OSHA) records. A taxpayer is eligible for a credit only if the taxpayer certifies that, at the establishment with respect to which the credit is claimed, the taxpayer has had no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. A "serious violation" is defined in G.S. 95-127.

The Department of Revenue receives notification from the Department of Labor annually of all employers with citations that have become final orders within the past three years. The Department of Revenue uses this information when auditing eligibility for the credits.

XI. Overdue Tax Debts (G.S. 105-129.83(g))

A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or an installment or carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved.

XII. General Administration

A. Expiration (*G.S. 105-129.83(h)*)

This section addresses general expiration provisions applying to all credits based on failure to continue to meet general eligibility requirements. In addition, there are expiration provisions that apply specifically to each credit. The specific provisions are discussed in the sections devoted to each credit. The general expiration provisions are listed below. When a credit expires, the taxpayer may not take any remaining installments of the credit.

The expiration of a credit may also affect the taxpayer's ability to take carryforwards of a credit. Under the first two circumstances described below, the taxpayer may continue to claim carryforwards of previous installments when a credit expires. Under the third circumstance, the carryforwards as well as the installments expire. See the section on Carryforwards of Unused Credits for additional information.

Circumstances That Result in Expiration of a Credit

1. During the period that installments of a credit accrue, the taxpayer is no longer primarily engaged in an eligible business at the establishment for which the credit was claimed.
2. During the period that installments of a credit accrue, the number of jobs of an eligible company headquarters falls below the minimum number required. When this happens, any credit associated with that company headquarters expires; the expiration is not limited to the jobs tax credit.
3. The taxpayer ceases to provide health insurance for its employees.

B. Forfeiture (*G.S. 105-129.83(i)*)

A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. Forfeiture provisions are listed below.

All Credits

A taxpayer forfeits a credit allowed if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed.

Credit for Investment in Real Property

A taxpayer forfeits the credit for investment in real property if it fails to timely make the required level of investment or fails to timely create the required number of new jobs.

C. Change in Ownership of Business (G.S. 105-129.83(j))

The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer if any of the following conditions are met:

1. The business closed before it was acquired.
2. The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.
3. The business was acquired by its employees directly or indirectly through an employee stock option transaction or another similar mechanism. For the purpose of this condition, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:
 - i. Ownership of more than 50% of the business.
 - ii. Ownership of not less than 40% of the business within seven years if the business has tangible assets with a net book value in excess of \$100,000,000 and has the majority of its operations located in a development tier one area.

The term "business" means a taxpayer or an establishment. For example, a taxpayer that purchases one of five plants from an unrelated entity has acquired a business, and must meet one of the three conditions described above in order to create new eligibility for its investment.

D. Advisory Ruling (G.S. 105-129.83(k))

A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit.

E. Planned Expansion (G.S. 105-129.83(l))

A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone or agrarian growth zone designations in effect at that time.

F. Tax Election (G.S. 105-129.84(a))

The credits are allowed against the franchise tax, the income tax, and the gross premiums tax. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

G. 50% Cap on Credits (G.S. 105-129.84(b))

The total of all credits may not exceed 50% of the cumulative amount of taxes against which they are allowed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer for the taxable year.

H. Carryforward of Unused Credit (G.S. 105-129.84(c))

Generally, any unused portion of a credit may be carried forward for the succeeding five years. Any unused portion of the credit for investment in real property may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least \$150,000,000 worth of business and real property, any unused portion of a credit with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the five-year carryforward rather than the 20-year carryforward applies.

I. Statute of Limitations (G.S. 105-129.84(d))

A taxpayer must claim a credit within six months after the date set by statute for the filing of the return that coincides with the year that the taxpayer qualified for

the credit, including any extensions of that date. The following example illustrates this requirement:

A calendar year taxpayer is eligible to take a credit for activity undertaken during 2007. The taxpayer files a timely extension on March 15, 2008, which extends the due date of the tax return to October 15, 2008. Applying the six-month statute of limitations, the taxpayer has until April 15, 2009 to file and report the 2007 credit. If the taxpayer had not filed a timely extension by March 15, 2008, the taxpayer would have had to file and report the credit by September 15, 2008.

J. Fees (G.S. 105-129.85(a))

The taxpayer must pay the Department of Revenue a fee of \$500.00 for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid.

XIII. CREDIT FOR CREATING JOBS (G.S. 105-129.87)

A. Eligibility

To be eligible for a credit for creating jobs, a taxpayer must meet the following conditions:

1. Meet all general eligibility requirements described in Section V.
2. Meet the threshold requirement for new job creation in the State.

B. Terms Used

Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.

Long-term unemployed worker – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Employment Security Commission.

C. Credit Amount

The amount of credit for each new job created is set out in the table below and is based upon the development tier of the area in which the position is located. If the job is located in an urban progress zone or an agrarian growth zone, the amount of the credit is increased by \$1,000 per job. In addition, if a job located in an urban progress zone or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional \$2,000 per job.

Area Development Tier	Amount of Credit for Each Job
Tier One	\$12,500
Tier Two	\$ 5,000
Tier Three	\$ 750

D. Threshold

The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress zone or an agrarian growth zone are not aggregated with jobs created at any other establishments regardless of county.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

E. Calculation

A job is located in a county, an urban progress zone, or an agrarian growth zone if more than 50% of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer had in this State during the taxable year. The average is computed on a monthly basis.

F. Installments

The credit is taken in four equal installments over the four-year period beginning the year after the taxpayer qualifies for the credit and is conditional upon the continued maintenance of those jobs by the taxpayer. If a taxpayer is required to file more than one tax return during a year, each return constitutes a year for purposes of taking installments of the credit.

G. Expiration

If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires, and the taxpayer may not take any remaining installments of the credit with respect to that job. If, in one of the four years in which an installment accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualifies for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. The expiration is illustrated by the following example:

Example 1

Taxpayer is claiming a credit for eight jobs in tier two at \$5,000 per job. The installments are \$10,000 each over four years. During the year that the third installment of the credit accrues, four jobs are no longer filled. The third and fourth installments must be recalculated to recognize the loss of the jobs. After the recalculation, the third and fourth installments that remain to be taken are \$5,000 each, rather than \$10,000 each, computed as follows:

$$\frac{(8 - 4) \times \$5,000}{4}$$

If the taxpayer has carryforwards from the first and second installments attributable to the 4 lost jobs, the taxpayer can continue to take the carryforwards for these even though the installments have expired. When a credit expires, the taxpayer can still take the portion of an installment that accrued in a previous year and was carried forward.

Example Two

Taxpayer claims a credit for eight new jobs in a tier one area for the 2007 tax year. Taxpayer's average number of full-time employees for the 2007 tax year was 28. Taxpayer's average number of full-time employees for the 2006 tax year was 20. Taxpayer's average number of full-time employees for the 2009 tax year is 24. In this example, all of the credits with respect to the eight jobs expire beginning with the 2009 installment. This is because the average number of employees for 2009 is lower than the sum of the applicable threshold and the average number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit. The taxpayer can still take the portion of an installment that accrued in a previous year and was carried forward.

H. Transferred Jobs

Jobs transferred from one area in the State to another area are not considered new jobs. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit are calculated as if the job had been created initially in the area to which it was moved.

I. No Double Credit

A taxpayer cannot claim a credit under Article 3J and Article 3A for the same jobs.

XIV. Credit for Investing in Business Property (G.S. 105-129.88)**A. Eligibility**

To be eligible for a credit for investing in business property, a taxpayer must:

1. Meet all general eligibility requirements described in Section V.
2. Purchase or lease business property.
3. Place the business property in service during the taxable year.

B. Terms Used

Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Internal Revenue Code. In the case of property the taxpayer leases from another, cost is valued at eight times the net annual rental rate as described in G.S. 105-130.4(j)(2).

Business Property – Tangible personal property that is used in a business and capitalized by the taxpayer for tax purposes under the Internal Revenue Code.

Eligible Business Property – Business property that is not leased to another party.

C. Credit Amount

The credit is equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. Property placed in service in

an urban progress zone or an agrarian growth zone is considered to be placed in service in a tier one area. Business property placed in service in an urban progress zone or an agrarian growth zone is not aggregated with business property placed in service at any other eligible establishments regardless of county. Applicable percentages are as follows:

Development Tier Area	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

The eligible investment amount is the lesser of the cost of the business property and the amount by which the cost of all of the taxpayer's business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most business property in service in this State.

The threshold is based on the development tier of the area where the business property is placed in service during the taxable year. Thresholds are as follows:

Development Tier Area	Threshold
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible business property in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

D. Taking the Credit

The credit is taken in four equal installments beginning the year after the taxpayer qualifies for the credit. If a taxpayer is required to file more than one tax

return during a year, each return constitutes a year for purposes of taking installments of the credit.

E. Expiration

As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If business property is disposed of prior to the end of the four-year period in which the credit is claimed, the amount of credit that relates to the business property no longer in service expires and a taxpayer may not take any remaining installment related to that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county as described in this subsection. If the net reduction in the cost of the taxpayer's eligible business property in the enterprise tier does not exceed 20% of the cost of the disposed property, the credit does not expire. If the net reduction exceeds 20%, the remaining installments of the credit expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B may not be included in the cost of all the taxpayer's eligible business property that is in service. If during a single tax year the taxpayer disposes of business property with respect to two or more credits in the same county, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property to determine if the credits expire.

The "net investment reduction" calculation is illustrated by the following example:

Taxpayer has \$10,000,000 of eligible business property in service in tier one. During the tax year, business property with a cost of \$2,500,000 is taken out of service. There are remaining installments of a credit related to the property taken out of service. Replacement property is placed into service during the same tax year at a cost of \$1,500,000. Total cost of eligible business property at the end of the tax year is \$9,000,000. The net investment reduction in tier one is \$1,000,000 (\$10 million - \$9 million). Twenty percent of the cost of the property taken out of service is \$500,000 ($\$2,500,000 \times .20$). The net reduction in total eligible business property (\$1 million) is greater than 20% of the cost of the eligible business property taken out of service (\$500,000). Therefore, the installments related to the \$2,500,000 in business property expire.

If a taxpayer disposes of a portion of the business property for which a credit is claimed, and the taxpayer is not entitled to continue taking the installments of the credit in accordance with the "net investment reduction" calculation illustrated above, the amount of the credit associated with the business property no longer in service expires. This calculation is illustrated by the following example:

Taxpayer has \$10,000,000 of eligible business property in service in tier one where the threshold is \$0. Taxpayer is claiming a credit of \$700,000 at \$175,000 per installment based on its \$10,000,000 investment. During the year that the third installment of the credit accrues, a piece of property for which the credit is claimed with a cost of \$2,500,000 is taken out of service.

The remaining installments beginning in year three are \$131,250 each, computed as follows:

$$\frac{\$10,000,000 - \$2,500,000 \times .07}{4}$$

When a credit expires, a taxpayer can still take a portion of an installment related to the business property no longer in service that was accrued in a previous year and was carried forward.

F. Transferred Property

If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

G. No Double Credit

A taxpayer cannot claim a credit under Article 3J and Article 3A for the same business property.

XV. CREDIT FOR INVESTMENT IN REAL PROPERTY (G.S. 105-129.89.)

(This credit is applicable only to real property placed in service in a development tier one area. Property placed in service in an urban progress zone or an agrarian growth zone is not considered to be placed in service in a tier one area for purposes of this credit.)

A. Eligibility

1. Meet all general eligibility requirements described in Section V.
2. Purchase or lease real property in a development tier one area. Property is located in a development tier one area if the area the property is located

in was a development tier one area at the time the taxpayer made a written application for the determination described in number (4) below.

3. Place the real property in service during the taxable year.
4. Receive a written determination from the Secretary of Commerce that the taxpayer is expected to purchase or lease and use in an eligible business in a tier one area within a three-year period at least \$10,000,000 of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business.

B. Terms Used

Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Internal Revenue Code. In the case of leased property, cost is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before the taxpayer uses it if the expenditures are not reimbursed or credited by the lessor.

C. Credit Amount

The credit is 30% of the eligible investment amount. The eligible investment amount is the lesser of the following:

1. The cost of the property.
2. The amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business.

When an investment is phased in over the course of more than one tax year, the taxpayer may claim a credit in each year based on the eligible investment amount of the property that is first used in an eligible business for the current tax year.

The basis in any real property for which a credit is allowed must be reduced by the amount of credit allowable.

D. Mixed Use Property

If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in an eligible business and the denominator of which is the total square footage of the property.

E. Taking the Credit

The credit is taken in seven equal installments beginning the year after the taxpayer qualifies for the credit. If a taxpayer is required to file more than one tax return during a year, each return constitutes a year for purposes of taking installments of the credit.

F. Expiration

The credit expires in the following circumstances:

1. When the property for which the credit is claimed is no longer used in an eligible business.
2. When a portion of the property for which the credit is claimed is no longer used in an eligible business. In this circumstance, only the amount of the credit associated with the portion no longer used in an eligible business expires. The remaining installments are computed by multiplying the total credit by the fraction described above in the subsection entitled Mixed-Use Property.
3. When the total number of employees at the property with respect to which the credit is claimed drops below 200.

When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer can still take the portion of an installment that accrued in a previous year and was carried forward.

I. No Double Credit

A taxpayer cannot claim a credit under Article 3J and Article 3A for the same real property.